Supreme Court, U.S.
FILED
FEB 5 - 2007
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No. 06-943

IN THE

Supreme Court of the United States

Robert E. Brown and Shirley H. Brown h/w,

Petitioners,

v.

Interbay Funding LLC, and Lagreca and Quinn Real Estate Services Inc.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT LAGRECA AND QUINN REAL ESTATE SERVICES, INC.

LOUIS RIZZO
ARTHUR KUHL*
ROCHELLE GUMAPAC
REGER RIZZO KAVULICH & DARNALL LLP
1001 Jefferson Place
Suite 202
Wilmington, DE 19801
(302) 652-3611

* *Counsel of Record*

Counsel for Respondent Lagreca and Quinn Real Estate Services Inc.

206481

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTION PRESENTED

Whether the Court of Appeals properly affirmed the District Court's grant of summary judgment when there was no genuine issue as to any material fact and the moving party was entitled to judgment as a matter of law.

CORPORATE DISCLOSURE STATEMENT

Respondent, Lagreca and Quinn Real Estate Services, Inc., has no parent corporation and no publicly held company owns 10% or more of its stock.

STATEMENT OF THE CASE

On March 11, 2004, in the hopes of expanding their deli, Plaintiffs entered into a sales agreement to purchase property located on three tax parcels, 2617, 2619, and 2625 Market Street, Wilmington, Delaware (hereinafter "Property") for $128,000. Based on other properties within the same zip code, the Plaintiffs anticipated the properties' value to be appraised at $200,000, making them eligible for 80% financing of the purchase price with a 20% down payment. Defendant Interbay Funding LLC (hereinafter "Interbay") agreed to give the Plaintiffs financing for the property subject to appraisal for which it hired Lagreca and Quinn Real Estate Services, Inc. (hereinafter "L&Q) as the independent appraiser. L&Q appraised the property at $140,000, which resulted in a change to the financing agreement such that Plaintiffs were only eligible for 65% financing of the purchase price with a 35% down payment.

Plaintiffs, after hearing of the change in the financing terms, rescinded the $2,500 that had been transferred to L&Q, alleging that L&Q used erroneous appraisal methods. Initially, Interbay agreed to have all three properties reappraised but later informed the Plaintiffs that the first appraisal was proper and they would not have it reappraised. Various attempts to save the deal with Interbay were unsuccessful. Although Plaintiffs received other offers for financing from two other lenders, they rejected the offers because they believed the lenders' terms, rates and conditions

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1. All factual and procedural assertions are supported by the Complaint, Motion for Summary Judgment filed by Defendant Lagreca and Quinn Real Estate Services, Inc, District Court Amended Memorandum Opinion and Third Circuit Court of Appeals Opinion.

were poor. On June 28, 2004 Plaintiffs filed a Complaint in the District Court of Delaware against Interbay and L&Q.

A. Proceedings in District Court

The Complaint alleged negligence, fraud, and discrimination claims in connection with the approval process for a mortgage loan. On July 19, 2004, Interbay moved to dismiss the action. On August 19, 2004 Plaintiffs moved for sanctions against Defendants. On November 8, 2004, the Court denied the Plaintiff's motion for sanctions and granted Interbay's motion to dismiss in part by denying Plaintiff's theory of agency between Interbay and L&Q. As a result, discovery ensued with cross motions for summary judgment and opposition therto subsequently filed. On January 11, 2006, District Court of Delaware, Judge Sue Robinson issued an Order granting Interbay's and L&Q's Motions for Summary Judgment and issued a Memorandum Opinion. On February 16, 2006, an Amended Memorandum was issued correcting one sentence of the original Memorandum Opinion.

B. Proceedings in Third Circuit Appellate Court

On February 17, 2006, the Plaintiffs filed an appeal to the Third Circuit Appellate Court claiming abuse of judicial discretion by Judge Sue Robinson in granting summary judgment for the Defendants. On August 18, 2006, before Judges Sloviter, Smith, and Van Antwerpen, the Appellate Court affirmed the District Court. The Plaintiffs then filed a Petition for Writ of Certiorari to the United Supreme Court claiming that the Court of Appeals affirmation was improper because it conflicted with Supreme Court case law and a Third Circuit Appellate case.

SUMMARY OF ARGUMENT

The decision of the Court of Appeals in no way conflicts with any applicable precedent of this Court including the case of *Youngblood v. West Virginia.* 126 S.Ct. 2188 (2006). Additionally, the Court of Appeals decision affirming the District Court judgment does not conflict with the case of *Nationwide Mutual Insurance Company v. Starlight Ballroom Dance Club, Inc.*, No. 05-1031, 2006 U.S. App. LEXIS 6282 (3d Cir. Mar. 14, 2006).

REASONS FOR DENYING THE PETITION

I. THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH ANY SUPREME COURT PRECEDENT

In *Young*, the Supreme Court granted a writ of certiorari to an inmate because it was found that possible exculpatory evidence, a note written by two of his accusers, was withheld by the police. *Young,* 126 S.Ct. 2188. When the government fails to disclose evidence materially favorable to the accused, there is a *Brady* violation. *See Brady v. Maryland*, 373 U.S. 83 (1963).

In the instant case, Plaintiffs cannot suggest that a Brady violation occurred as in *Young* because this is a civil matter not a criminal matter. Additionally, even if *Brady* applied to civil matters, Plaintiffs have mistakenly analyzed the case because they cite to the alleged application of "irrational and erroneous reasoning of facts" by Judge Robinson as the *Brady* violation rather than citing to facts in the record indicating they were denied an opportunity to examine evidence that

would be favorable to them. Thus the affirmation by the Court of Appeals does not conflict with this or any other Supreme Court precedent.

II. THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH PRIOR PRECEDENT IN THE COURT OF APPEALS

In *Nationwide v. Starlight Ballroom Dance Club*, No. 05-1031, 2006 U.S. App. LEXIS 6282 (3d Cir. Mar. 14, 2006), the court affirmed the lower court's default judgment because the insured waited three months to answer the declaratory judgment suit filed by the insurer, Nationwide, and the insured could not have shown that it would have had a meritorious defense and the default was not the result of its culpable conduct. *Starlight*, 2006 U.S. App. LEXIS 6282. In order for the Court to vacate a default judgment, the Court must take into consideration: (1) whether the plaintiff will be prejudiced; (2) whether the defense has a meritorious defense; and (3) whether the default was the result of the defendant's culpable conduct. *Harad v. Aetna Cas. & Sur. Co.*, 839 F.2d 979 (3d Cir. 1988).

Plaintiffs' reliance on *Nationwide* is clearly misplaced. As the Court of Appeals stated in its opinion, the time period to file an answer in this case was tolled as to Interbay when it filed a motion to dismiss pursuant to Rule 12(b)(6), which does not replace the requirement of an answer but rather just extends Interbay's time to file an answer until ten days after receiving notice of the District Court's action on its motion. *See* FED. R. CIV. P. 12(a)(4)(A) and 12(b)(6). As to L&Q, it properly filed an answer to the complaint, filing it on July 17, 2004 within the 20 day time frame permitted by FRCP Rule 12(a)(1)(A). *See* FED. R. CIV. P. 12(a)(1)(A). Thus,

the standard to be used when deciding to vacate a default judgment is not applicable here since there was no default judgment entered in this case.

CONCLUSION

Robert and Shirley Browns' petition for writ of certiorari should be denied.

Respectfully submitted,

LOUIS RIZZO
ARTHUR KUHL*
ROCHELLE GUMAPAC
REGER RIZZO KAVULICH & DARNALL LLP
1001 Jefferson Place
Suite 202
Wilmington, DE 19801
(302) 652-3611

Counsel for Respondent
Lagreca and Quinn Real Estate
Services Inc.

* *Counsel of Record*

REPLY BRIEF

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(4)

06-943

No.2

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IN THE
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UNITED STATES

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Robert F. Brown and
Shirley H. Brown h/w
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Interbay Funding LLC, and Legreca
and Quinn Real Estate Services Inc.
Respondents

****

ON PETITION FOR WRIT OF CERTIORARI FROM THE
UNITED STATES COUR OF APPEALS
FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Finger & Slanina, LLC
David L. Finger
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE 19801-11
(302) 884-6766
Rizza Reger &, LLP
Anton D. Kohl* Esq.
1001 Jefferson Plaza, Suite 202
Wilmington, DE. 19801
(302) 652 3611
Attorneys For Petitioners
David M. Souders
Sandra L. Brickel
Weiner Brodsky

Brown vs Interbay and
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QUESTIONS PRESENTED

1. Is a Fraud being attempted on United States Supreme Court?
2. Did the Judges of the United States District Court of Delaware, and the Third Circuit Court of Appeals error when they allowed Interbay Funding LLC to use their filing date of July 19, 2004 of their Motion to dismiss which expired on August 2, 2004, as Interbay Funding LLC filing a timely answer to Robert E. and Shirley H. Browns Complaint? (***See Exhibit A, Docket entry no. 8)***
3. Did the Judges of the United States District Court of Delaware, and the Third Circuit Court of Appeals error when they allowed Interbay Funding LLC to obscure the actual filing date which appears on the United States District Court of Delaware's Docket showing that Interbay Funding LLC did not file an answer to Robert E. and Shirley H. Browns Complaint until November 22, 2004? (***See Exhibit A, Docket entry No. 36)***
4. Did United States District Court acquire jurisdiction of the person of Interbay?
5. Did the Respondents conceal evidence of the correct filing date of Interlays' filing of the answer to the Robert E. and Shirley H. Browns Complaint?

STATEMENT OF THE CASE

The Browns Petition of Writ of Certiorari was granted on the basis of Supreme Court Rule 10, a, b, and c.

RESPONDENTS ARGUMENT

L.Q argument is that the decision of the two cases (Youngblood v. West Virginia and Nationwide Insurance Co. v. Starlight Ballroom) the Brown's cite in support of their Petition do not conflict with the ruling of Judge Sue L. Robinson of the District Court of the State of Delaware and the Third Circuit Court of Appeals Opinion of Judges Sloviter, Smith and Van Antwerpen of August 18, 2006.

L.Q alleges that the case of Youngblood v. W. Virginia issues of this case are criminal and involved the with holding of evidence by the state prosecutor, therefore was not relevant nor applicable to the Brown v. Interbay and Legrecca and Quinn case, based solely on the issues involved in the cases.

L.Q alleges that the case of Nationwide Insurance Co. v. Starlight Ballroom is misplaced because the Third Circuit Court of Appeals admits that Interbay Funding LLC herein after referred to as Interbay Motion to Dismiss was not an answer

required by See FED CIV. P Rule 7, but it extended the time to file and answer until ten days after receiving notice of the District Courts action on the Motion to Dismiss See FED Civ. P. 12(a) (4(A), 12(B) (6).

L.Q further states that Interbay filed an answer to the complaint, by filing its Motion to Dismiss on July 17, 2004 was within the 20 day time frame permitted by FRCP Rule 12(a)(1)(A).

PETITIONERS RESPONSE

The Brown's allege that L.Q has misrepresented the facts of the case of Interbay's filing an answer to the Brown's Summons and Complaint served on Interbay on June 28, 2004 of which they did not answer until November 22, 2004 (***See Docket "No. 33 Answer to Complaint by Interbay Funding LLC." See attached Exhibit A, line 36).***

The Browns further allege that L.Q response brief on page 4 paragraph heading,

"II THE DECISION OF THE COURT OF APPEALS DOES NOT CONFLICT WITH PRIOR PRECEDENT IN THE COURT OF APPEALS" second paragraph, states that Interbay

filed a Motion to Dismiss on July 19, 2004, which was the 20th day and the last day Interbay had to file an answer to the Browns Complaint.

L.Q states FED. CIV. P. Rule 12(b)(6), which does not replace the requirement of an answer but rather just extends Interplay's time to file an answer until ten days after receiving notice of the District Court's action on its motion.

The Browns states that the United States District Court of Delaware Docket No. 8 Interbay Funding LLC filing of the Motion to Dismiss on 7/ 19/ 2004 was extended to 8/2/2004, after which time, the extension it had expired. ***(See attached Exhibit A, line 8).***

The Browns state that the period which appears on Exhibit A, line 8 (Interlays Motion to Dismiss) to line 36 of Exhibit A (Interlays Answer to the Browns Complaint) is a total of 113 days. ***(See attached Exhibit A).***

A. PROCEDINGS IN DISTRICT COURT

The District Court allowed Interbay Funding LLC to use their filing date of Motion to Dismiss of July 19, 2004 which

expired on August 2, 2004 as their timely filing of an answer to the Robert E. and Shirley H. Browns Complaint.

B. The Third Circuit Court of Appeals also allowed Interbay Funding LLC to use their Motion to dismiss filing of July 19, 2004 as the correct date for filing an answer to the Robert E. and Shirley H. Browns Complaint.

SUMMARY OF ARGUMENT

The decision of the United States District Court of the State of Delaware, and the Third Circuit Court of Appeals decisions conflict with ***Youngblood v. W. Virginia and Nationwide Insurance Co. v. Starlight Ballroom*** cases Robert E. and Shirley H. Brown have cited pursuant to Supreme Court Rule 10, a, b, and c.

REASONS FOR GRANTING THE PETITION:

UNITED STATES DISTRICT COURT OF DELAWARE AND THE THIRD CIRCUIT COURT OF APPEALS CONFLICTS WITH

Youngblood v. W. Virginia and *Brown v. Interbay and Legreca and Quinn.*

The issues of Youngblood v. W. Virginia was the State prosecutor for the State of W. Virginia with held evidence of a hand written note by the victim of the alleged rape by Youngblood, that the sexual act was with consent.

On Appeal to the United States Supreme Court the Supreme Court held that it was a violation of Youngblood's civil rights for the State of W. Virginia to with hold evidence that would exonerate Youngblood, and reversed the conviction.

Robert E. and Shirley H. Brown contend that the issues of Brown v. Interbay Funding LLC and Legreca Quinn are similar because in the ease of Brown v. Interbay and Legreca and Quinn, the Defendants\Respondents with held evidence of the fact that Interbay did not file an answer to the Robert E. and Shirley H. Brown Complaint until November 22, 2004. (See Exhibit A, entry 36, Interbay Funding LLC answer to Complaint.

UNITED STATES DISTRICT COURT OF DELAWARE AND THE THIRD CIRCUIT COURT OF APPEALS CONFLICTS WITH;

Nationwide Insurance Co. v. Starlight Ballroom

Robert E. and Shirley H. Brown further contend that ***Nationwide Insurance Co. v. Starlight Ballroom and Brown v. Interbay and Legreca and Quinn*** are similar in that ***Nationwide Insurance Co.*** **filed a Complaint against** ***Starlight Ballroom*** **but** ***Starlight Ballroom*** did not answer the complaint until 120 days after they had been served with the Summons and Complaint.

Nationwide Insurance Co. filed for a Default Judgment and was granted a judgment against ***Starlight Ballroom***.

Starlight Ballroom files a Motion to Set Aside the Default Judgment.

The Third Circuit Court of Appeals denied ***Starlight Ballrooms Motion to Set Aside the Judgment***, holding that the District Court had three issues it had to consider, 1. Would the party filing the motion be prejudiced, 2. Did the defendant have a meritorious defense, and 3? Was the default due to the defendants own culpability?

In Brown ***v. Interbay Funding LLC and Legreca and Quinn,*** **the** ***Browns filed their Complaint on June 28, 2004 and Interbay filed a Motion to Dismiss on July 19, 2004*** which was

the last day of the required 20 day period Interbay had to answer the ***Complaint.*** This meant that Interbay had an additional 10 days to answer which was due by February 2, 2004.

The ***Browns*** contend that the United States District Courts Docket item No. 36 shows that ***Interbay Funding LLC did not file*** an answer to the ***Browns Complaint until 113 days after it was required by FRCP 7,*** which states that a defendant has 20 days to file an answer to a complaint.

CONCLUSION

Robert E. and Shirley H. Brown respectfully request that this Writ of Certiorari be allowed to go forward.

Robert E. Brown

Shirley H. Brown h/w
1024 Walnut Street
Wilmington, DE. 19801
(302) 652- 9959

Notary of Republic

EMERY T. GHOLSTON
NOTARY PUBLIC
STATE OF DELAWARE
IMISSION EXPIRES SEPTEMBER 17 2009

EMERY T. GHOLSTON
NOTARY PUBLIC
STATE OF DELAWARE
MY COMMISSION EXPIRES SEPTEMBER 17 200

IN THE
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Robert E. Brown and
Shirley H. Brown h/w
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Respondents

CERTIFICATE OF SERVICE NOTICE OF PETITIONERS RESPONSE BRIEF TO RESPONDENTS BRIEF IN OPPOSITION TO WRIT OF CERTIORARI

This is to certify that on this 11th day of 2007 (Feb) This notice of Writ of Certiorari was served on the following lawyers:

David L. Finger Finger & Slanina, LLC David M. Souders
One Commerce Center
1201 Orange Street, Suite 725
Wilmington, DE. 19801
(302) 884-1666
(302) 884-6766

Sandra L. Brickel
Weiner Brodwky
1300 19th Street,
Suite 725
Washington, DE
20036-1609
(202) 884-2000
(202) 628-2011 Reger

Arthur D. Kuhl,* Esq.
Reger Rizzo Kavulich and Darnall LLP
1001 Jefferson Plaza, Suite 202
Wilmington, DE. 19801

Robert E. Brown, Pro Se.

Shirley H. Brown, h/w
1024 Walnut Street
Wilmington DE. 19801
(302) 652-9959

APPENDICES

EXHIBIT A 1 of 2

Suite 202
Wilmington, DE 19801
(302) 652-3611
Email: cantoff@regrizlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Movant
The United States of America represented by **Ellen W. Slights**
U.S. Attorney's Office
The Nemours Building
1007 Orange Street, Suite 700
P.O. Box 2046
Wilmington, DE 19899-2046
(302) 573-6277
Email: ellen.slights@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/28/2004	1	COMPLAINT filed. Magistrate Consent Notice & Rule 4 to Pltf. FILING FEE $ 150.00 RECEIPT # 136390 (mwm) (Entered: 06/28/2004)
06/28/2004		SUMMONS(ES) issued for Interbay funding LLC, Legreca & Quinn (mwm) (Entered: 06/28/2004)
06/30/2004	2	RETURN OF SERVICE executed as to Interbay funding LLC 6/29/04 Answer due on 7/19/04 for Interbay funding LLC (dab) (Entered: 07/01/2004)
06/30/2004	3	RETURN OF SERVICE executed as to Legreca & Quinn 6/29/04 Answer due on 7/19/04 for Legreca & Quinn (dab) (Entered: 07/01/2004)
07/07/2004	4	CASE assigned to Judge Sue L. Robinson . Notice to all parties. (rjb) (Entered: 07/07/2004)
07/15/2004	5	Letter to Clerk from C. Antoff enclosing Entry of Appearance (fmt) (Entered: 07/15/2004)
07/15/2004	6	NOTICE of attorney appearance for Legreca & Quinn by Carol J. Antoff (fmt) (Entered: 07/15/2004)
07/16/2004	7	ANSWER to Complaint by Legreca & Quinn; jury demand (fmt) (Entered: 07/19/2004)
07/19/2004	8	MOTION by Interbay funding LLC with Proposed Order to Dismiss Answer Brief due 8/2/04 re: [8-1] motion (fmt) (Entered: 07/19/2004)
07/19/2004		**Added for Interbay funding LLC attorney David L. Finger (fmt) (Entered: 07/19/2004)
07/19/2004	9	Opening Brief Filed by Interbay funding LLC [8-1] motion to Dismiss

11/22/2004	35	Letter to plt's. from Judge Robinson returning papers captioned "Stipulation of Compromise and Settlement" consistent with Fed. R. Civ. 68; not to be filed unless accepted by the adverse party and should only be filed by the deft(s). in a case. (rld) (Entered: 11/22/2004)
11/22/2004	36	ANSWER to Complaint by Interbay funding LLC (fmt) (Entered: 11/22/2004)
11/22/2004	37	MOTION by Robert E. Brown, Shirley H. Brown to Amend Pleading by Leave of the Court and Reconsideration of Rule 11 Sactions based on Reversable Error Pursuant to Rule 60, B, Answer Brief due 12/6/04 re: [37-1] motion (fmt) (Entered: 11/22/2004)
11/30/2004	38	MOTION by Robert E. Brown, Shirley H. Brown for Default Judgment against Interbay funding LLC Answer Brief due 12/14/04 re: [38-1] motion (rld) (Entered: 12/01/2004)
11/30/2004	39	Letter to Clerk from D. Mellon enclosing D.I. 40 for filing. (rld) (Entered: 12/01/2004)
11/30/2004	40	Answer Brief Filed by Legreca & Quinn [37-1] motion to Amend Pleading by Leave of the Court and Reconsideration of Rule 11 Sactions based on Reversable Error Pursuant to Rule 60, B, - Reply Brief due 12/7/04 (rld) (Entered: 12/01/2004)
12/06/2004	41	INTERROGATORIES propounded by Robert E. Brown, Shirley H. Brown to Interbay funding LLC, Legreca & Quinn (rld) (Entered: 12/06/2004)
12/06/2004	42	Answer Brief Filed by Interbay funding LLC [37-1] motion to Amend Pleading by Leave of the Court and Reconsideration of Rule 11 Sactions based on Reversable Error Pursuant to Rule 60, B, - Reply Brief due 12/13/04 (rld) (Entered: 12/07/2004)
12/07/2004	43	Compendium of unreported cases Filed by Interbay funding LLC re: [42-1] answer brief (rld) (Entered: 12/07/2004)
12/08/2004	44	Answer Brief Filed by Interbay funding LLC [38-1] motion for Default Judgment against Interbay funding LLC - Reply Brief due 12/15/04 (rld) (Entered: 12/08/2004)
12/14/2004		**Terminated deadlines (rld) (Entered: 12/14/2004)
12/20/2004	45	Response to Defendants Response Filed by Robert E. Brown, Shirley H. Brown [38-1] motion for Default Judgment against Interbay funding LLC (fmt) (Entered: 12/21/2004)
12/22/2004		**Terminated deadlines (rld) (Entered: 12/22/2004)
01/11/2005	46	ANSWER to Interrogatories filed by Interbay funding LLC (rld) (Entered: 01/11/2005)
01/13/2005	47	Letter to Clerk from C. Antoff enclosing cert. of svc. (fmt) (Entered: 01/18/2005)